

**CHAPTER 556. POWERS OF APPOINTMENT
REVISED STATUTES OF 1846**

556.1-556.62 Repealed. 1967, Act 224, Eff. Nov. 2, 1967.

**RELEASE BY DONEE OF POWER OF APPOINTMENT
Act 296 of 1945**

556.101-556.106 Repealed. 1967, Act 224, Eff. Nov. 2, 1967.

POWERS OF APPOINTMENT ACT OF 1967
Act 224 of 1967

AN ACT relating to powers, the creation and exercise of powers, release of powers, contracts to appoint, dispositions when powers are unexercised, rights of creditors of donees of powers, computations under the rule against perpetuities, reservation of powers of revocation, and recording of instruments; and to repeal certain acts and parts of acts.

History: 1967, Act 224, Eff. Nov. 2, 1967.

The People of the State of Michigan enact:

556.111 Powers of appointment act; short title.

Sec. 1. This act shall be known and may be cited as the “powers of appointment act of 1967”.

History: 1967, Act 224, Eff. Nov. 2, 1967.

556.112 Powers of appointment act; definitions.

Sec. 2. As used in this act:

- (a) “Property” means any legal or equitable interest in real or personal property, including choses in action.
- (b) “Power” means a power of appointment over property.
- (c) “Power of appointment” means a power created or reserved by a person having property subject to his disposition which enables the donee of the power to designate, within any limits that may be prescribed, the transferees of the property or the shares or the interests in which it shall be received; but it does not include a power of sale, a power of attorney or a power of amendment or revocation.
- (d) “Donor” means the person who creates or reserves the power.
- (e) “Donee” means the person to whom the power is granted or reserved.
- (f) “Appointee” means the person to whom an interest in property is designated or transferred by exercise of the power.
- (g) “Creating instrument” means the deed, will, trust agreement or other writing or document which creates or reserves the power.
- (h) “General power” means a power exercisable in favor of the donee, his estate, his creditors or the creditors of his estate, whether or not it is exercisable in favor of others. A power to appoint to any person or a power which is not expressly restricted as to appointees is a general power. A power may be general as to some property and special as to other property.
- (i) “Special power” means a power exercisable only in favor of 1 or more persons not including the donee, his estate, his creditors or the creditors of his estate.
- (j) “Gift in default” means a transfer to a person designated in the creating instrument as the transferee of property if a power is not exercised or is released.
- (k) “Release” means renunciation, relinquishment, surrender, refusal to accept, and any other form of release.
- (l) A power of appointment is “presently” exercisable whenever the creating instrument does not manifest an intent that its exercise shall be solely by will or otherwise postponed.

History: 1967, Act 224, Eff. Nov. 2, 1967.

556.113 Powers of appointment; creation; donors, qualifications.

Sec. 3. (1) A power may be created by any creating instrument which is executed in the manner required by law for that instrument.

(2) The donor of a power must be a person capable of transferring the interest in property to which the power relates and having a transferable interest in such property.

History: 1967, Act 224, Eff. Nov. 2, 1967.

556.114 Manifestation of intent to exercise.

Sec. 4. Unless otherwise provided in the creating instrument, an instrument manifests an intent to exercise the power if the instrument purports to transfer an interest in the appointive property that the donee would have no power to transfer except by virtue of the power, even though the power is not recited or referred to in the instrument, or if the instrument either expressly or by necessary implication from its wording, interpreted in the light of the circumstances surrounding its drafting and execution, manifests an intent to exercise the power. Subject to the other provisions of this section, if there is a general power exercisable by will with no express gift in default in the creating instrument, a residuary clause or other general language in the donee's

will purporting to dispose of all of the donee's estate or property operates to exercise the power, but in all other cases such a clause or language does not in itself manifest an intent to exercise a power exercisable by will.

History: 1967, Act 224, Eff. Nov. 2, 1967;—Am. 1970, Act 195, Imd. Eff. Aug. 6, 1970;—Am. 2000, Act 68, Eff. Apr. 1, 2000.

556.115 Methods by which powers may be exercised by donees.

Sec. 5. (1) A power can be exercised by any donee capable of transferring the interest in property to which the power relates.

(2) A power can be exercised only by a written instrument which would be sufficient to pass the interest intended to be appointed if the donee were the owner of the interest. Unless otherwise contemplated in the creating instrument, a power can be exercised only by a written instrument which complies with the requirements, if any, of the creating instrument as to the manner, time and conditions of the exercise of the power, except that a power exercisable only by deed is also exercisable by a written will executed as required by law.

(3) If the donor has authorized the power to be exercised by an instrument not sufficient in law to pass the appointive interest, the power is not void, but may be exercised by an instrument conforming to subsection (2).

(4) If consent of the donor or of any other person is required for the exercise of a power, the consent must be expressed in the instrument exercising the power or in a separate written instrument, signed in either case by the persons whose consent is required. If any person whose consent is required dies or becomes legally incapable of consenting, the power may be exercised by the donee without the consent of that person unless the creating instrument, construed with regard to surrounding circumstances, manifests a contrary intent.

(5) When a power is vested in 2 or more persons, all must unite in its exercise; but if 1 or more of the donees dies, becomes incapable of exercising the power, or releases the power, the power may be exercised by the others, unless the creating instrument, construed with regard to surrounding circumstances, manifests a contrary intent.

History: 1967, Act 224, Eff. Nov. 2, 1967;—Am. 1970, Act 195, Imd. Eff. Aug. 6, 1970.

556.116 Interests appointable by general powers; part of donee's estate.

Sec. 6. (1) If the will of a donee of a general power exercisable by will either effectively exercises the power or manifests an intent to exercise the power and satisfies the requirements of sections 4 and 5, all interests which the donee could by will appoint and which the donee's will appoints or purports to appoint shall be regarded as part of the donee's estate for the following purposes only:

(a) The payment of the expenses of administration of the donee's estate, to the extent that the donee's individual assets are insufficient for that purpose.

(b) The satisfaction of the claims of the donee's creditors, to the extent provided in section 13.

(c) Inclusion of such interests in determining the right of election of the donee's widow and the satisfaction of such right.

(d) The distribution of any of such interests as the intestate property of the donee, to the extent that the donee's will does not effectively dispose of such interests and the creating instrument does not otherwise provide.

(2) This section does not affect the period during which the vesting of a future interest may be suspended or postponed by an instrument exercising a power as provided in section 14.

History: 1967, Act 224, Eff. Nov. 2, 1967;—Am. 1970, Act 195, Imd. Eff. Aug. 6, 1970.

556.117 Naming appointees by donees of powers.

Sec. 7. The donee of any power may appoint the whole or any part of the appointive assets to any 1 or more of the permissible appointees and exclude others, except as otherwise provided in the creating instrument.

History: 1967, Act 224, Eff. Nov. 2, 1967.

556.118 Release of powers; method; delivery.

Sec. 8. (1) Unless the creating instrument expressly provides that a power cannot be released or expressly restricts the time, manner or scope of release, all powers may be released except as provided in subsection (2).

(2) Unless the creating instrument expressly provides otherwise, a special power may not be released if either the power is not presently exercisable, or the power is exercisable by a trustee or other fiduciary in a fiduciary capacity which requires the exercise of the power.

(3) The release of a power may include all or any part of the property subject to the power; reduce or limit

the persons or objects, or classes of persons or objects in whose favor the power is exercisable; or limit in any other respect the extent to or the manner in which the power may be exercised.

(4) A release may be effected, either with or without consideration, by written instrument signed by the donee and delivered.

(5) Delivery of a release may be accomplished in any of the following ways, but this subsection does not preclude a determination that a release has been delivered in some other manner:

(a) Delivery to any person specified in the creating instrument.

(b) Delivery to a trustee or other fiduciary or to 1 of several trustees or other fiduciaries, other than the donee, of the property to which the power relates, or by filing with the court having jurisdiction over the trust.

(c) Delivery to any person, other than the donee, who could be adversely affected by an exercise of the power.

(d) By recording or filing in the office of the register of deeds in the county where the property is located or where the donee resides, which release shall be recorded by the register.

History: 1967, Act 224, Eff. Nov. 2, 1967;—Am. 1970, Act 195, Imd. Eff. Aug. 6, 1970.

556.119 Creation, exercise and release of powers; irrevocability.

Sec. 9. The creation, exercise or release of a power is irrevocable unless the power to revoke is reserved in the instrument creating, exercising or releasing the power.

History: 1967, Act 224, Eff. Nov. 2, 1967.

556.120 Contracts of donees of powers to make appointments; remedies.

Sec. 10. (1) Unless the creating instrument provides otherwise, the donee of a power, presently exercisable, can contract to make an appointment, if neither the contract nor the promised appointment confers a benefit upon a person who is not a permissible appointee under the power.

(2) Unless the creating instrument provides otherwise, the donee of a power not presently exercisable cannot contract to make an appointment. If the donee cannot contract to make an appointment, but nevertheless does so contract, the promisee cannot obtain either specific performance or damages, except that he can obtain damages equal to the value given by him for the promise.

History: 1967, Act 224, Eff. Nov. 2, 1967.

556.121 Instruments relating to powers to appoint interests in land; recording as conveyances.

Sec. 11. (1) Any of the following instruments relating to powers to appoint interests in land is entitled to be recorded as a conveyance upon compliance with section 23 of chapter 65 of the Revised Statutes of 1846, being section 565.23 of the Compiled Laws of 1948:

(a) An instrument, other than a will, exercising a power.

(b) An instrument expressing consent to exercise.

(c) A release.

(2) If a power is exercised by a will, a certified copy of the will and of the certificate of probate thereof may be recorded.

History: 1967, Act 224, Eff. Nov. 2, 1967.

556.122 Special power; passing on donee's default.

Sec. 12. If the donee of a special power fails to exercise effectively the power, or totally releases a releasable special power, the interests which might have been appointed under the power pass:

(a) If the creating instrument contains an express gift in default, then in accordance with the terms of the gift.

(b) If the creating instrument contains no express gift in default and does not clearly indicate that the permissible appointees are to take only if the donee exercises the power, then equally to the permissible appointees living at the time of the termination or release of the power, but if the power is to appoint among a class, such as "relatives", "issue" or "heirs", then to those persons in the closest degree of kinship or representing others in the same degree of kinship who would have taken had there been an express appointment per stirpes to the described class effective as of the termination or release of the power.

(c) If the creating instrument contains no express gift in default and clearly indicates that the permissible appointees are to take only if the donee exercises the power, then by reversion to the donor or his estate; but if the creating instrument expressly states that there is no reversion in the donor, then any language in the creating instrument indicating or stating that the permissible appointees are to take only if the donee exercises the power is to be disregarded and the interests shall pass in accordance with subdivision (b).

History: 1967, Act 224, Eff. Nov. 2, 1967;—Am. 1970, Act 195, Imd. Eff. Aug. 6, 1970.

***** 556.123 THIS SECTION IS AMENDED EFFECTIVE APRIL 1, 2010: See 556.123.amended *****

556.123 General powers; creditors' rights in appointable interests.

Sec. 13. (1) If the donee has a general power of appointment, any interest which the donee has power to appoint or has appointed is to be treated as property of the donee for the purposes of satisfying claims of his creditors, as provided in this section.

(2) If the donee has an unexercised general power of appointment and he can presently exercise such a power, any creditor of the donee may by appropriate proceedings reach any interest which the donee could appoint, to the extent that the donee's individual assets are insufficient to satisfy the creditor's claim. If the donee has exercised the power, the creditor can reach the appointed interests to the same extent that under the law relating to fraudulent conveyances he could reach property which the donee has owned and transferred.

(3) If the donee has at the time of his death a general power of appointment, whether or not he exercises the power, the executor or other legal representative of the donee may reach on behalf of creditors any interest which the donee could have appointed to the extent that the claim of any creditor has been filed and allowed in the donee's estate but not paid because the assets of the estate are insufficient.

(4) Under a general assignment by the donee for the benefit of his creditors, the assignee may exercise any right which a creditor of the donee would have under subsection (2).

(5) A purchaser without actual notice and for a valuable consideration of any interest in property, legal or equitable, takes the interest free of any rights which the donee's estate or a creditor of the donee might have under this section.

(6) If more than 1 person is the donee of a general power of appointment, it shall be presumed that the interests of the donees in the property subject to the power is equally owned among them unless the creating instrument indicates otherwise.

History: 1967, Act 224, Eff. Nov. 2, 1967.

***** 556.123.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 1, 2010 *****

556.123.amended General powers; creditors' rights in appointable interests.

Sec. 13. (1) If a donee has a general power of appointment, any interest that the donee has power to appoint or has appointed is to be treated as property of the donee for the purposes of satisfying claims of the donee's creditors, as provided in this section.

(2) If a donee has an unexercised general power of appointment and the donee can presently exercise such a power, any creditor of the donee may by appropriate proceedings reach any interest that the donee could appoint, to the extent that the donee's individual assets are insufficient to satisfy the creditor's claim. If the donee has exercised the power, the creditor can reach the appointed interests to the same extent that under the law relating to fraudulent conveyances the creditor could reach property that the donee has owned and transferred.

(3) If a donee has at the time of his or her death a general power of appointment, whether or not he or she exercises the power, the personal representative or other legal representative of the donee may reach on behalf of creditors any interest that the donee could have appointed to the extent that the claim of a creditor has been filed and allowed in the donee's estate but not paid because the assets of the estate are insufficient.

(4) Under a general assignment by a donee for the benefit of the donee's creditors, the assignee may exercise any right that a creditor of the donee would have under subsection (2).

(5) A purchaser without actual notice and for a valuable consideration of any interest in property, legal or equitable, takes the interest free of any rights that the donee's estate or a creditor of the donee has under this section.

(6) If more than 1 person is the donee of a general power of appointment, it shall be presumed that the interests of the donees in the property subject to the power are equally owned among them unless the creating instrument indicates otherwise.

(7) The lapse, release, waiver, or disclaimer of a power of appointment given to a donee by a donor is not a gift, conveyance, transfer, or assignment of property by the donee.

History: 1967, Act 224, Eff. Nov. 2, 1967;—Am. 2009, Act 45, Eff. Apr. 1, 2010.

556.124 Suspension or postponement of vesting of future interests; time period.

Sec. 14. The period during which the vesting of a future interest may be suspended or postponed by an instrument exercising a power begins in the case of an instrument exercising a general power presently exercisable, on the effective date of the instrument of exercise; and in all other situations, at the time of the

creation of the power.

History: 1967, Act 224, Eff. Nov. 2, 1967.

556.125 Suspension or postponement of vesting of future interests; time period when trust creator reserves power to amend or revoke.

Sec. 15. When the creator of a trust reserves to himself an unqualified power to amend or revoke, the period during which the vesting of a future interest may be suspended or postponed begins when the unqualified power to amend or revoke terminates, whether by reason of the death of the trust creator, by release or otherwise; or on the effective date of the instrument exercising the power to revoke.

History: 1967, Act 224, Eff. Nov. 2, 1967.

556.126 Postponement of vesting of future interests; law determining period.

Sec. 16. When the provisions of sections 14 or 15 apply, the permissible period for the postponement of a vesting of a future interest shall be fixed in accordance with either the law in effect at the time of the exercise of the power or of the termination of the unqualified power of amendment or revocation, or in accordance with the law in effect at the time of the creation of the power, whichever will support the validity of the exercise of the power.

History: 1967, Act 224, Eff. Nov. 2, 1967.

556.127 Postponement of vesting of future interests; facts and circumstances to be considered.

Sec. 17. When the period during which the vesting of a future interest may be postponed must be computed from the time of the creation of a power, with respect to interests sought to be created by an instrument exercising the power, facts and circumstances existing at the effective date of the instrument exercising the power shall be taken into account.

History: 1967, Act 224, Eff. Nov. 2, 1967.

556.128 Reserved power of revocation; effect on creditors and purchasers.

Sec. 18. When the grantor in a conveyance reserves to himself an unqualified power of revocation, he is thereafter deemed still to be the absolute owner of the estate conveyed, so far as the rights of his creditors and purchasers are concerned. If the grantor dies without exercising such power, the executor or other legal representative of the grantor may reach the estate conveyed on behalf of any creditor whose claim has been filed and allowed in the grantor's probate estate but not paid because the assets of the probate estate are insufficient to satisfy his claim. This section shall not confer upon the executor or other legal representative of the grantor the right to obtain on behalf of creditors any of the proceeds of life insurance policies or other distributions from qualified pension, profit sharing and stock bonus plans that might be payable as a result of the death of the grantor.

History: 1967, Act 224, Eff. Nov. 2, 1967;—Am. 1970, Act 195, Imd. Eff. Aug. 6, 1970.

556.129 Law applicability; construction of act.

Sec. 19. As to all matters not within this act or any other applicable statute, the common law is to govern. This section is not intended to restrict in any manner the meaning of any provision of this act or any other applicable statute.

History: 1967, Act 224, Eff. Nov. 2, 1967.

556.130 Death of appointee prior to exercise of power; nonlapse of appointment.

Sec. 20. If an attempted exercise of a power is ineffective because of an appointee's death before the effective date of the exercise, the appointment does not lapse and section 2603 of the estates and protected individuals code, 1998 PA 286, MCL 700.2603, applies.

History: 1967, Act 224, Eff. Nov. 2, 1967;—Am. 2000, Act 68, Eff. Apr. 1, 2000.

Compiler's note: The reference to "1998 PA 286, MCL 700.2603" at the end of this section evidently should read "1998 PA 386, MCL 700.2603."

556.131 Membership of class; determination; after born members.

Sec. 21. Except as provided in section 20, when the donee of a power executes an instrument exercising the power in favor of a class, the membership of the class shall be determined as of the effective date of the exercise and include any person otherwise qualified as a member of the class who was born after the execution of the instrument exercising the power and before the effective date of the exercise unless a different intention is apparent from the instrument exercising the power.

History: 1967, Act 224, Eff. Nov. 2, 1967;—Am. 1970, Act 195, Imd. Eff. Aug. 6, 1970.

556.132 Applicability of act.

Sec. 22. The provisions of this act are applicable to any power existing on the effective date of this act, as well as a power created after that date.

History: 1967, Act 224, Eff. Nov. 2, 1967.

556.133 Repeal.

Sec. 23. Chapter 64 of the Revised Statutes of 1846, being sections 556.1 to 556.62 of the Compiled Laws of 1948, and Act No. 296 of the Public Acts of 1945, being sections 556.101 to 556.106 of the Compiled Laws of 1948, are repealed.

History: 1967, Act 224, Eff. Nov. 2, 1967.

**DURABLE POWER OF ATTORNEY
Act 376 of 1976**

556.151-556.153 Repealed. 1978, Act 642, Eff. July 1, 1979.